

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

CHARLES WALLACE and
LANITA WALLACE,

Plaintiffs,

v.

MICHAEL A. TRIBBEY, M.D. and
THOMAS R. RUSSELL, M.D.,

Defendants.

Case No. CIV-07-296-KEW

ORDER TRANSFERRING VENUE

This matter comes before the Court on Defendants' Motion to Dismiss filed October 12, 2007 (Docket Entry #11). Defendants assert venue is inappropriate in this District and, in accordance with 28 U.S.C. § 1406 and Fed. R. Civ. P. 12(b), the action should be dismissed or, alternatively, transferred to the United States District Court for the Western District of Oklahoma. In support of this contention, Defendants allege Plaintiffs have asserted in their Complaint filed *pro se* that they are citizens of the State of Texas, Defendants are residents of Oklahoma City, Oklahoma, and the acts of medical malpractice which forms the basis for this case allegedly occurred in Oklahoma City, Oklahoma.

Where diversity of citizenship forms the basis of jurisdiction in an action, venue is appropriate in (1) a judicial district where any defendant resides, if all defendants reside in the same state; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial

part of the property that is the subject of the action is situated; or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, there is no district in which the action may otherwise be brought. 28 U.S.C. § 1391. This District is not the proper venue for this action under any of these criteria. Because this action is filed *pro se* and in an effort to conserve resources of both parties, this Court will direct the transfer of venue to the Western District, where venue is appropriate under both (1) and (2) of § 1391, rather than dismiss this case.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss filed October 12, 2007 (Docket Entry #11) is hereby **DENIED**. However, Defendants' alternative Motion to Transfer Venue contained in the prayer of the same motion is hereby **GRANTED**. Accordingly, this action is hereby **TRANSFERRED** to the United States District Court for the Western District of Oklahoma for further disposition.

IT IS SO ORDERED this 17th day of November, 2007.


KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE